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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,294	12/09/2003	Lisa C. Tidwell	020375-045100US	3652
20350 7590 06/09/2010 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER REFAI, RAMSEY				
ART UNIT		PAPER NUMBER		
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06/09/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* LISA C. TIDWELL, AMY L. SWIFT, CASSANDRA MOLLETT,  
MARK WALLIN, LANCE D. PATE, and CHARLES R. WILLIAMS

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Appeal 2010-002113  
Application 10/731,294  
Technology Center 3600

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Before DALE M. SHAW, *Division 2 Support Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 CFR §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on December 14, 2009. A Docketing Notice was mailed and Appeal No. 2010-002113 was assigned on December 30, 2009.

Claim 23 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte*

*Rodriguez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. Int’l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf) . Thus, there is a question as to whether claim 23 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 23 and the claims which depend upon this claim, meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/mls

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